IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 291 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHARDABEN RATILAL THAKKAR

Versus

KISHOR VALJI THAKKAR PERSONALLY AS WELL AS FOR HUF

Appearance:

1. Appeal from Order No. 291 of 1998

MR SURESH M SHAH for Petitioner No. 1

MR PARESH M DAVE for Respondents No. 1-4

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. Heard the learned Counsel for the parties. In pursuance of the order dated 18.9.2001 Records & Proceeding was called for from the trial Court. The same has been perused by both the learned Counsel for the parties.

2. It was conceded by learned Counsel Shri Paresh Dave for the respondents that after the appointment of Advocate Shri C.H.Vora as Judge, City Civil Court, Shri

Ganatra filed his power for one of them i.e. husband Ratilal and not for wife Shardaben. It seems that without issuing notice to the plaintiff to make alternative arrangement on their behalf to appear in the Suit the learned Judge decided the matter on the appearance filed by Shri Ganatra for one of the plaintiff i.e. Ratilal.

3. It is true that both the plaintiffs are husband and wife, but technically both of them are entitled to engage their Advocate after their earlier advocate has been appointed as Judge of the City Civil Court.

4. In view of the above, the impugned Judgment and order dated 30.5.1998 passed by the learned Judge below Ex.131 in Special Civil Suit No.169 of 1991 has to be set aside and accordingly it is set aside.

5. The Appeal is allowed and the matter is remanded to the learned trial Judge with a direction to hear and decide the Application Ex.131 afresh after extending the opportunity to the present appellant - plaintiff No.2 Shardaben. She and her husband Ratilal shall make alternative arrangement to appear before the learned trial Judge in Special Civil Suit No.169 of 1991 and at first instance both of them remain present either personally or through their Advocate before the learned trial Judge on 3.12.2001 and after hearing them the learned trial Judge shall decide the Application Ex.131. Records & Proceeding be sent back to the trial Court forthwith.

Date : October 09, 2001 (B.J.Shethna, J.)
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